

Exhibit 36

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: Chapter 11
SEARS HOLDINGS Case No:
CORPORATION, et al., 18-23538 (RDD)
Debtor.

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AUCTION PROCEEDING
New York, New York
January 15, 2019

Reported by:
MARY F. BOWMAN, RPR, CRR
JOB NO. 154062

<p style="text-align: right;">Page 37</p> <p>1 2 3 4 5 January 15, 2019 6 10:05 a.m. 7 8 9 Proceedings, held at the offices 10 of Weil, Gotshal & Manges, LLP, 767 Fifth 11 Avenue, New York, New York, before Mary F. 12 Bowman, a Registered Professional Reporter, 13 Certified Realtime Reporter, and Notary 14 Public of the State of New Jersey. 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 38</p> <p>1 2 APPEARANCES (Speakers): 3 4 WEIL, GOTSHAL & MANGES 5 Attorneys for Debtors, and 6 Debtors-in-Possession: Sears Holdings 7 Corporation, et al., 8 767 Fifth Avenue 9 New York, New York 10153 10 BY: RAY SCHROCK, ESQ. 11 12 AKIN GUMP STRAUSS HAUSER & FELD 13 Attorneys for Unsecured Creditors: 14 One Bryant Park 15 Bank of America Tower 16 New York, New York 10036 17 BY: PHILIP DUBLIN, ESQ. 18 19 PAUL, WEISS, RIFKIND, WHARTON & GARRISON 20 Attorneys for the Subcommittee of the 21 Board of Sears Holdings 22 1285 Avenue of the Americas 23 New York, NY 10019 24 BY: PAUL BASTA, ESQ. 25</p>
<p style="text-align: right;">Page 39</p> <p>1 2 APPEARANCES (Speakers): 3 4 CLEARY GOTTlieb STEEN & HAMILTON 5 Attorneys for Defendants 6 One Liberty Plaza 7 New York, NY 10006 8 BY: SEAN O'NEAL, ESQ. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 40</p> <p>1 Proceedings - 1/15/19 2 MR. SCHROCK: Let's go back on 3 the record. It is January 15, 2019 at 4 approximately 10:05 a.m. 5 First of all, thank you to 6 everyone for your patience and working 7 with the debtors yesterday. There has 8 been a significant amount of 9 back-and-forth between ESL, as well as 10 with the debtors and their consultation 11 parties. And we decided late last 12 night to allow ESL overnight to put 13 together a response to the proposal 14 from the debtors, and at this time, we 15 will have them put that proposal on the 16 record, after which time we are going 17 to take a break, go discuss it with the 18 restructuring committee and the 19 consultation parties. 20 We will go back on the record 21 with the debtors' decision as to 22 whether or not the offer is higher or 23 better or a successful bid, a/k/a 24 successful bid, and from that, we will 25 make a decision about whether or not</p>

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<p>1 Proceedings - 1/15/19</p> <p>2 the auction will remain open or we will</p> <p>3 close the action at that time.</p> <p>4 Just a quick reminder, of course</p> <p>5 the auction, as long as the auction</p> <p>6 remains open, everyone remains bound by</p> <p>7 the auction rules, especially the</p> <p>8 duties of confidentiality that are</p> <p>9 contained in the auction rules.</p> <p>10 But thanks for your patience.</p> <p>11 Shun.</p> <p>12 MR. O'NEAL: Good morning. Sean</p> <p>13 O'Neal, Cleary Gottlieb, on behalf of</p> <p>14 ESL.</p> <p>15 I do want to put some things on</p> <p>16 the record because this is no ordinary</p> <p>17 moment. It's not an ordinary auction.</p> <p>18 Really the fate of an American icon and</p> <p>19 the fate of 45,000 employees hangs in</p> <p>20 the balance.</p> <p>21 Since December 28, ESL has</p> <p>22 improved its bid, improved its offer in</p> <p>23 response to an ever-increasing list of</p> <p>24 demands.</p> <p>25 Over the past few weeks, the</p>	<p>1 Proceedings - 1/15/19</p> <p>2 debtors have been singularly focused on</p> <p>3 one thing, which is requiring ESL to</p> <p>4 guarantee that the debtors will not</p> <p>5 become administratively insolvent,</p> <p>6 without acknowledging that their own</p> <p>7 liquidation analysis, their own</p> <p>8 alternatives would also lead to</p> <p>9 administrative insolvency.</p> <p>10 On January 7, when we had our</p> <p>11 chambers conference, the alleged</p> <p>12 administrative claims gap was</p> <p>13 approximately 77 million. It's on that</p> <p>14 basis that ESL deposited 120 million</p> <p>15 dollars. Of that amount, approximately</p> <p>16 17.9 million was described as</p> <p>17 nonrefundable.</p> <p>18 After the wire hit, the demands</p> <p>19 grew, and as of last night, the alleged</p> <p>20 gap in administrative expense claims</p> <p>21 was at least 225 million.</p> <p>22 As we have told the debtors --</p> <p>23 and none of the things that I'm saying</p> <p>24 will be news to the debtors or the</p> <p>25 subcommittee -- as we have told them,</p>
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<p>1 Proceedings - 1/15/19</p> <p>2 that we believe their purported</p> <p>3 concerns about administrative</p> <p>4 insolvency are belied by their own</p> <p>5 analysis, their own liquidation</p> <p>6 analysis, which ignores the statutory</p> <p>7 priorities that recall ESL's adequate</p> <p>8 protection super priority claims, as</p> <p>9 well as the adequate protection super</p> <p>10 priority claims of all second lien</p> <p>11 lenders to be senior to all general</p> <p>12 administrative claims.</p> <p>13 In fact, by our read, the</p> <p>14 debtors' liquidation analysis shows</p> <p>15 that the proposed liquidation will</p> <p>16 render them administratively insolvent.</p> <p>17 They cannot pay ESL for Cyrus' adequate</p> <p>18 protection claims. They can only</p> <p>19 purport to pay general administrative</p> <p>20 claims by subordinating the second</p> <p>21 lienholder adequate protection claims.</p> <p>22 I will not belabor the point, but</p> <p>23 we have certainly relayed it to the</p> <p>24 debtors. But we do feel compelled to</p> <p>25 put that on the record today.</p>	<p>1 Proceedings - 1/15/19</p> <p>2 Now, at the beginning of the</p> <p>3 auction, we described the ESL bid which</p> <p>4 included numerous improvements focusing</p> <p>5 on conditionality and employee-related</p> <p>6 issues.</p> <p>7 We were here on Friday, we were</p> <p>8 here on Saturday, we were here on</p> <p>9 Sunday. We always had our principals</p> <p>10 available, every moment. And</p> <p>11 yesterday, we had one of our lead</p> <p>12 principals here all day until the early</p> <p>13 morning hours.</p> <p>14 During the day, from 8 a.m. until</p> <p>15 well past midnight, we met with the</p> <p>16 debtors extensively and their</p> <p>17 professionals extensively. We debated</p> <p>18 and we argued and we fought, but we</p> <p>19 also try to get to a deal, ESL tried to</p> <p>20 get to a deal.</p> <p>21 Last night, we received an</p> <p>22 extraordinary fill or kill offer from</p> <p>23 the debtors, including the</p> <p>24 subcommittee. I say extraordinary</p> <p>25 because it simply cannot be accepted.</p>

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<p>1 Proceedings - 1/15/19</p> <p>2 It was not an offer that could be</p> <p>3 accepted. I will not take time to</p> <p>4 describe that offer.</p> <p>5 Nonetheless, in the interest of</p> <p>6 trying to move things forward, ESL has</p> <p>7 improved its bid and I will now</p> <p>8 describe those modifications.</p> <p>9 In response to concerns about</p> <p>10 conditionality, we have made a number</p> <p>11 of revisions and we made these</p> <p>12 revisions late into the night.</p> <p>13 Number one, we removed the</p> <p>14 condition precedent requiring an</p> <p>15 amendment to the Seritage master lease.</p> <p>16 Number two, we have modified the</p> <p>17 closing conditions relating to the</p> <p>18 delivery of inventory and receivables</p> <p>19 to make it easier for the debtors to</p> <p>20 satisfy.</p> <p>21 Number three, we provided the</p> <p>22 estate with the benefit of any</p> <p>23 inventory and receivables in excess of</p> <p>24 amounts required to satisfy closing</p> <p>25 conditions.</p>	<p>1 Proceedings - 1/15/19</p> <p>2 Number four, subject to lender</p> <p>3 approval, we removed the marketing</p> <p>4 period requirement and eased the</p> <p>5 required information delivery</p> <p>6 obligations for marketing the buyer's</p> <p>7 financing.</p> <p>8 Number five, we accelerated the</p> <p>9 timing of assumed payment obligations</p> <p>10 so, for example, the buyer would</p> <p>11 reimburse severance as paid on the</p> <p>12 current projected timeline when due.</p> <p>13 The buyer will pay assumed</p> <p>14 liabilities -- I am sorry, would pay</p> <p>15 assumed payables when due and buyer</p> <p>16 would pay 503(b)(9) obligations on the</p> <p>17 earlier of 120 days after the closing</p> <p>18 and plan confirmation.</p> <p>19 Next, we removed the requirement</p> <p>20 that holders of protection agreements</p> <p>21 affirm their agreements before the</p> <p>22 buyer will assume those obligations.</p> <p>23 And finally, we extended the</p> <p>24 obligation to continue compensation and</p> <p>25 benefits through the fiscal year ending</p>
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<p>1 Proceedings - 1/15/19</p> <p>2 2020.</p> <p>3 In addition, we, on an economic</p> <p>4 perspective, we improved the bid by 50</p> <p>5 million dollars. We have eliminated</p> <p>6 the 30 million dollar expense</p> <p>7 reimbursement, and we have agreed not</p> <p>8 to reduce the purchase price despite</p> <p>9 the fact that the assets included in</p> <p>10 the December 7 list that was provided</p> <p>11 to us had 20 million in assets that had</p> <p>12 already been sold and cannot be</p> <p>13 transferred to NewCo.</p> <p>14 Now, we have a copy of the APA</p> <p>15 reflecting these improvements which we</p> <p>16 will mark as an exhibit for the auction</p> <p>17 proceedings.</p> <p>18 (Exhibit A, document entitled</p> <p>19 "Asset Purchase Agreement By and Among</p> <p>20 Transform HoldCo LLC, Sears Holdings</p> <p>21 Corporation, and its Subsidiary Parties</p> <p>22 Hereto" marked for identification, as</p> <p>23 of this date.)</p> <p>24 MR. O'NEAL: Now, we hope that</p> <p>25 Sears will accept this offer. We hope</p>	<p>1 Proceedings - 1/15/19</p> <p>2 that the debtors will accept this</p> <p>3 offer.</p> <p>4 We believe this is a pivotal</p> <p>5 moment in the life of Sears. The</p> <p>6 company and the board have the</p> <p>7 opportunity to accept a compelling bid</p> <p>8 that provides for more than 1.5 billion</p> <p>9 in value in excess of the liquidation</p> <p>10 analysis.</p> <p>11 We believe that liquidation will</p> <p>12 result only in less value to the</p> <p>13 stakeholders. The experience of the</p> <p>14 debtors in this auction process, as</p> <p>15 well as virtually every single other</p> <p>16 retail bankruptcy, make it abundantly</p> <p>17 clear that liquidation results in lower</p> <p>18 recoveries.</p> <p>19 Here, the debtors are faced with</p> <p>20 a going concern bid that pays in full</p> <p>21 all senior creditors and provides some</p> <p>22 value for unsecured creditors,</p> <p>23 including through continued employment,</p> <p>24 continued vendor relationships,</p> <p>25 continued customer relationships, and</p>

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2 an opportunity for recoveries to other
3 unsecured creditors.
4 As we have told to the debtors,
5 to the extent that our offer is not
6 rejected -- or is not accepted, to the
7 extent that our offer is not accepted,
8 we will have no choice but to seek
9 redress.
10 That is all we have to say.
11 Thank you very much.
12 MR. SCHROCK: Ray Schrock for
13 Weil, for the debtors.
14 Thank you, Sean. We will review
15 the proposal and go through the steps
16 that I discussed before you went on the
17 record and we will respond more fully,
18 I'm sure at that time.
19 But in the meantime, you can
20 certainly take for the record that the
21 debtors disagree with much of what you
22 said about the actions of this process.
23 Thank you. We are adjourned.
24 (Recess)
25 MR. SCHROCK: Back on the record.

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2 has determined that the ESL bid is not
3 executable and is not otherwise higher
4 or better when compared to the
5 company's alternatives.
6 There are a number of significant
7 problems that the company has with the
8 ESL bid and we have tried, and I want
9 to say, so very hard to get there with
10 this deal. Everything depends on it.
11 This committee is put, you know,
12 in a very difficult position, one that
13 it accepts, to have to evaluate the
14 alternatives between a wind-down and
15 what's best for the stakeholders and a
16 going concern and we have been twisting
17 and turning and trying to find a way to
18 get the ESL bid done.
19 But when you have a negotiating
20 party that is buying all of the assets
21 and trying to ensure that you have
22 enough cash to get to the closing and,
23 you know, get past the close, it's an
24 extraordinarily difficult exercise.
25 And I think for both sides in fairness.

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2 Good afternoon. Again, Ray
3 Schrock, Weil Gotshal on behalf of the
4 debtors, attorneys for Sears.
5 It is January 15, approximately
6 1:12 p.m. And I'm here to announce the
7 status of ESL's bid.
8 First, just a quick reminder
9 about the debtor's corporate governance
10 structure. The role of the
11 restructuring committee is to review
12 affiliate transactions, among other
13 items. The subcommittee is or the
14 restructuring committee is handling all
15 issues associated with credit bidding.
16 So with this announcement, I'm
17 going to ask Paul Basta on behalf of
18 the restructuring subcommittee to come
19 up here, and if the official committee
20 of unsecured creditors or other
21 consultation parties want to speak,
22 they are certainly free to do so.
23 At this time, unfortunately,
24 after consulting with the consultation
25 parties, the restructuring committee

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2 But when we run the company's
3 numbers and we are talking about a
4 closing that would occur as quickly as
5 February 8, there is simply not enough
6 cash to get to the closing. OK. We --
7 even if we wanted to accept the
8 transaction, there is not enough cash
9 to get to the closing. We're roughly,
10 at least 150 million dollars short.
11 There has been a lot of talk and
12 some hyperbole on the record about
13 goal-post moving. This is a
14 multi-billion dollar corporation. We
15 are talking about buying all of the
16 assets and then leaving the company
17 with basically a going concern, but
18 everything is gone and then to have the
19 estate be able to wind up
20 professionally, you know, allow the
21 parties and the stakeholders to have
22 what they have and get a plan
23 confirmed -- there is always going to
24 be movement on administrative claims in
25 a company of this size. But when we

<p style="text-align: right;">Page 53</p> <p>1 Proceedings - 1/15/19 2 are talking about moving 20 million, 30 3 million dollars for a company with 4 billions of dollars in sales, things 5 change day to day. So we are doing the 6 very best we can, but I'm proud of the 7 work that financial professionals and 8 the legal professionals have done 9 representing the committee. 10 On the financing front, I would 11 just note that we still think that even 12 though ESL has said their obligation or 13 their APA are not subject to financing, 14 there is conditioned obligations 15 related to the financing. And the 16 ability to get the senior financing 17 closed, it is -- on NewCo, it is not 18 certain. OK. And that's a risk that 19 effectively the company was being asked 20 to bear. 21 The aggregate proceeds under 22 ESL's ABL financing were limited to 850 23 million. We are trying to find a way 24 to manage-down to that number because 25 the company's projections showed it</p>	<p style="text-align: right;">Page 54</p> <p>1 Proceedings - 1/15/19 2 would be a much larger number. And 3 there is some complicated calculations 4 that I won't go into. 5 I think the parties are working 6 very hard to try and get there but, 7 frankly, that risk and asking the 8 company to bear that risk to close, it 9 was not something that we felt was fair 10 or in the company's best interest to 11 take that risk. 12 The company's other major junior 13 DIP financing partner, Cyrus, I believe 14 was going to take up to 230 million of 15 the junior DIP and roll it. We never 16 heard if it was officially 230, but I 17 will accept, you know, based on 18 conversations with counsel -- and I'm 19 getting a thumb's up for the record 20 from Cyrus that they would, in fact, 21 get to the 230 -- that still left us 22 with 120 of the junior DIP we were 23 going to have to repay and those are 24 our projections that we would draw the 25 full junior DIP.</p>
<p style="text-align: right;">Page 55</p> <p>1 Proceedings - 1/15/19 2 Having to pay off that junior DIP 3 at close was certainly a major hurdle 4 that we just couldn't clear in trying 5 to accept the transaction. It's not 6 something where we could just say 7 that's the estate's problem. 8 There has been a lot of 9 discussion about administrative 10 insolvency, insolvency, and certainly 11 it is something that, as professionals 12 and for the company to be able to pay 13 and when we filed the company in the 14 Second Circuit, you know, a major 15 consideration for the board was paying 16 severance for employees, and the Second 17 Circuit is one of those jurisdictions 18 where administrative claims, you know, 19 include severance and it's very unique, 20 unlike Toys-R-Us and other 21 jurisdictions where it becomes 22 prepetition claims, and so getting this 23 wind-down account, being able to take a 24 care of the employees no matter what 25 happened, it was a fundamental working</p>	<p style="text-align: right;">Page 56</p> <p>1 Proceedings - 1/15/19 2 premise for the advisors, for the board 3 in engaging in this exercise. 4 And so when you hear the 5 restructuring committee and the 6 professionals talk about administrative 7 solvency, we want to make sure that we 8 are taking care of the employees. We 9 ant to make sure we are wrapping up the 10 case. It is not about just confirming 11 a plan. 12 But we believe and continue to 13 believe that we have a path to do so 14 under the company's alternatives, and I 15 would note the company's other 16 alternatives are conservative in their 17 assumptions. We will let the record 18 speak for itself on exactly how you 19 parse through that, but there is 20 certainly upside, we believe, in the 21 liquidation analysis and certainly 22 other alternatives that could be 23 pursued. 24 But unfortunately, ESL and the 25 debtors we have not been able to agree</p>

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2 on what it's going to take and be able
3 to keep the company on the right side
4 of administrative insolvency.
5 When we looked at the
6 consideration that was being provided
7 for unencumbered assets or -- as for
8 unencumbered assets, most of those
9 assets were being purchased by ESL for
10 relatively little consideration. The
11 debtors already have indications of
12 interest for several hundred million
13 dollars on those assets, but we were
14 willing to try to find a way to bridge
15 the gap there on this.
16 But when you couple that with
17 having a party that's buying basically
18 all of the assets and we are left in
19 administratively insolvent position, we
20 believe that there was insufficient
21 consideration for the unencumbered
22 assets.
23 On the assumption of
24 administrative liabilities, I think we
25 made a lot of progress over the last

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2 several days, and I think the changes
3 that ESL made were extremely helpful on
4 503(b)(9) claims, as well as the
5 assumption of liabilities for accounts
6 payable.
7 I think that's just the law. I
8 think that's the way it had to work and
9 I don't think the court has
10 jurisdiction to change those terms. So
11 while I appreciate the ESL made those
12 changes, I don't think the court really
13 had the ability to modify those terms
14 otherwise.
15 I know that we have taken the 30
16 million dollar expense reimbursement
17 off the table for the record. We agree
18 with that -- that expense reimbursement
19 was being requested in contravention of
20 the global asset bidding procedures
21 order.
22 On the employee front, that was
23 one of the primary benefits we
24 considered with the ESL transaction, of
25 course, and the ability to keep

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2 everyone employed. It was a very
3 significant consideration for the
4 restructuring committee.
5 The EPA has revised -- I think
6 Mr. O'Neal mentioned that it was going
7 to -- that the benefits on severance
8 had been extended through 2020. But I
9 think just to correct, and this might
10 have been an oversight in his comments,
11 that it's really through the fiscal
12 2020, so really through February --
13 January 31, 2020. So it is really just
14 was a month change at the end of the
15 day.
16 The transfer taxes were still
17 going to be reduced, reduce the
18 purchase price. The tax liabilities
19 were there. The credit bid and release
20 issues remained unresolved as we
21 approached the finish line here. And
22 overall, on the closing risk, we just
23 felt that, listen, this was -- there
24 was still a lot of risk in the
25 transaction. That risk was primarily

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2 being borne by the estate for getting
3 to the closing and without recourse to
4 the remainder of the deposit.
5 I take serious issue with any
6 kind of suggestion that we are like
7 moving goal posts or otherwise doing
8 things to get ESL 17.9 million dollars.
9 Frankly, I can't think of another
10 situation where a group has done more
11 to try and make a bid work. But it is
12 especially difficult to try and do that
13 in a situation where you have got an
14 insider and chairman, when, you know,
15 we are facing the potential litigation
16 with that very party while trying to
17 evaluate the bid.
18 There was an issue around KCD
19 which is the party that owns the
20 intellectual property, Kenmore, Die
21 Hard. They have asserted
22 administrative claim. We were going to
23 try to manage through that, frankly,
24 through some very aggressive legal
25 strategies. That's a 100-plus-million

<p style="text-align: right;">Page 61</p> <p>1 Proceedings - 1/15/19 2 dollar administrative claim. It's not 3 an attempt to hold anyone up. It is 4 just a reality. Listen, we have got 5 administrative claims. These are 6 super-priority claims, even if they 7 were to become a get debtor under the 8 cash management offer. 9 There is no waiver, even after 10 the purchase of all these assets, there 11 was not waiver of 507(b) claims and 12 other claims in the estate after 13 purchasing the assets. 14 So that we would be left with 15 very significant claims that I guess 16 would still threaten to take 17 recoveries. We were hopeful we could 18 bridge the gap on that, but at the end 19 of the day those still remained on the 20 table and remained an issue for 21 everyone. 22 And then finally, I just want to 23 note that this is not an exhaustive 24 list of issues, and after Mr. Basta 25 speaks, after we go speak to the judge,</p>	<p style="text-align: right;">Page 62</p> <p>1 Proceedings - 1/15/19 2 this is all highly confidential until 3 the record is closed. 4 But after we speak to the judge, 5 we will come back on the record, we 6 will let you know the next steps. But 7 I want to stress that -- I can speak 8 personally that we have done everything 9 we can to try and make this work. 10 So Paul. 11 MR. BASTA: Hello everybody, Paul 12 Basta from Paul Weiss. We represent 13 the subcommittee of the board of Sears 14 Holdings. 15 The mandate of the subcommittee 16 is to investigate and prosecute estate 17 causes of action including causes of 18 action against ESL and its affiliates. 19 As Ray mentioned, the mandate 20 also includes the authority to approve 21 or disapprove of any ESL transaction 22 that involves releases or the right to 23 credit bid. 24 The subcommittee has taken its 25 job incredibly seriously, the</p>
<p style="text-align: right;">Page 63</p> <p>1 Proceedings - 1/15/19 2 subcommittee received approximately 1.1 3 million documents from relevant 4 counterparties and we have also 5 received and reviewed confidential and 6 previously undisclosed evidence. 7 The restructuring committee 8 conducted on-the-record interviews with 9 the creditors committee with a key 10 players in this unfolding saga, 11 including Mr. Lampert of ESL. 12 The subcommittee has reached the 13 conclusion that substantial claims 14 exist against ESL and its affiliates, 15 as well as other defendants relating to 16 ESL's abuse of its control of the 17 debtors and the transfer of hundreds of 18 million of dollars of assets to ESL and 19 its affiliates for inadequate 20 consideration. Those transfers hurt 21 Sears and its employees. 22 As a result of this conclusion, 23 we find ourselves in the unique 24 situation where the sole going concern 25 bidder for Sears is a party for which</p>	<p style="text-align: right;">Page 64</p> <p>1 Proceedings - 1/15/19 2 there are substantial claims against 3 which there are substantial claims. 4 Under normal circumstances, this 5 would be the end of the inquiry. A 6 defendant would not be permitted as a 7 matter of fairness or under Bankruptcy 8 Code jurisprudence from credit bidding 9 for assets until the claims against 10 that party were resolved or if there 11 was a cash backstop to the credit bid. 12 The restructuring committee would 13 not accept that outcome because it 14 believes in the reorganization purpose 15 of the Bankruptcy Code, it owes a 16 fiduciary duty to Sears, and it cares 17 about Sears and its employees. 18 Accordingly, the subcommittee 19 proposed solutions to ESL. The 20 subcommittee proposed that ESL could 21 credit bid, receive a release of 22 equitable subordination and 23 recharacterization claims if it 24 proposed a better transaction. And a 25 better transaction is a transaction</p>

<p style="text-align: right;">Page 65</p> <p>1 Proceedings - 1/15/19</p> <p>2 that can close, that would not leave</p> <p>3 the company administratively insolvent,</p> <p>4 that would provide a better recovery</p> <p>5 for creditors other than ESL, and that</p> <p>6 provided some direct consideration for</p> <p>7 the opportunity to credit bid and</p> <p>8 release the equitable subordination and</p> <p>9 recharacterization claims.</p> <p>10 The subcommittee also proposed to</p> <p>11 ESL that it could receive a broader</p> <p>12 release if it paid consideration for</p> <p>13 such broader release.</p> <p>14 Unfortunately, the proposed ESL</p> <p>15 transaction meets none of the legal</p> <p>16 requirements and primarily benefits</p> <p>17 ESL.</p> <p>18 It is unfortunate and sad that</p> <p>19 its clear from the earlier record that</p> <p>20 ESL intends to pay a blame game and</p> <p>21 blame the fiduciaries who are trying to</p> <p>22 reach the right outcome here for the</p> <p>23 outcome, and in that process, ESL has</p> <p>24 made a number of misstatements on the</p> <p>25 prior record that require correction.</p>	<p style="text-align: right;">Page 66</p> <p>1 Proceedings - 1/15/19</p> <p>2 ESL suggested that their bid is</p> <p>3 viable and it can close. Any benefits</p> <p>4 of the ESL transaction are ephemeral</p> <p>5 for the reasons that Ray articulated</p> <p>6 and that the company does not have</p> <p>7 sufficient cash to close the</p> <p>8 transaction. Administrative solvency</p> <p>9 is a commitment by the company to pay</p> <p>10 back those parties that provide goods</p> <p>11 and services to the estate</p> <p>12 post-petition, so it can conduct a</p> <p>13 reorganization and get to the other</p> <p>14 side. ESL's bid leaves the company</p> <p>15 admittedly administratively insolvent.</p> <p>16 While ESL acknowledges that</p> <p>17 infirmity in the bid, they suggest that</p> <p>18 the company would be administratively</p> <p>19 insolvent in a wind-down. That is not</p> <p>20 the analysis of the subcommittee or its</p> <p>21 advisors, and it's predicated on the</p> <p>22 threat of a significant administrative</p> <p>23 claim to be asserted by ESL when this</p> <p>24 company has engaged in bankruptcy and</p> <p>25 incurred substantial losses for the</p>
<p style="text-align: right;">Page 67</p> <p>1 Proceedings - 1/15/19</p> <p>2 purpose of trying to enable a going</p> <p>3 concern bid by ESL.</p> <p>4 ESL is assuming substantial</p> <p>5 administrative claims and it has</p> <p>6 suggested to the subcommittee that</p> <p>7 those assumptions of liabilities should</p> <p>8 be given credit in connection with</p> <p>9 allowing credit bidding or a release.</p> <p>10 The analysis of the subcommittee</p> <p>11 and its financial advisors is that</p> <p>12 while ESL is, in fact, assuming</p> <p>13 liabilities, the unencumbered assets</p> <p>14 that they are receiving in exchange</p> <p>15 have a value that is greater than the</p> <p>16 liabilities that ESL is assuming.</p> <p>17 Another misstatement is that ESL</p> <p>18 actually negotiated with the</p> <p>19 subcommittee. That did not occur. ESL</p> <p>20 has known the subcommittee's position</p> <p>21 regarding credit bidding and releases</p> <p>22 since the January 4 hearing. The</p> <p>23 subcommittee and its professionals sat</p> <p>24 in a conference room all day Friday</p> <p>25 waiting to negotiate with ESL and that</p>	<p style="text-align: right;">Page 68</p> <p>1 Proceedings - 1/15/19</p> <p>2 never happened.</p> <p>3 The subcommittee was told to</p> <p>4 return on Sunday morning to negotiate</p> <p>5 with ESL. The subcommittee came back,</p> <p>6 spent all day in a conference room here</p> <p>7 at Weil, and there was never any</p> <p>8 negotiation.</p> <p>9 The subcommittee was told to</p> <p>10 return on Monday, late in the day on</p> <p>11 Monday, after it waited around all day.</p> <p>12 It was asked to provide a take-it or</p> <p>13 leave-it. It didn't give a take-it or</p> <p>14 leave-it. It was asked to provide a</p> <p>15 take-it or leave-it, so we provided it</p> <p>16 and it was rejected.</p> <p>17 We agree with ESL that this is a</p> <p>18 sad day for Sears and its employees.</p> <p>19 The subcommittee hoped that ESL would</p> <p>20 have been in a position to propose a</p> <p>21 viable transaction that could have</p> <p>22 closed and that could have given the</p> <p>23 opportunity to credit bid.</p> <p>24 MR. DUBLIN: Good afternoon, Phil</p> <p>25 Dublin, Akin Gump for the committee.</p>

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2 I'll be very brief. In short the
3 committee agrees with the debtors'
4 conclusion that the ESL bid is not the
5 highest and best alternative available
6 for Sears and its stakeholders.

7 Among other things, not even
8 taking into account what we believe is
9 woefully inadequate consideration under
10 the ESL bid for the proposed releases
11 and the right to credit bid, the
12 committee believes that the ESL bid
13 will receive the debtors' estates
14 administratively insolvent.

15 It is not executable in the short
16 term or actionable for the long term
17 and contains significant
18 conditionality, including conditions
19 outside the debtors' control.

20 Essentially, ESL's bid evidences
21 a one-way option for ESL to push the
22 debtors' estates at great risk.

23 The committee believes the
24 debtors' wind-down waterfall, while
25 conservative, evidences that sufficient

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2 value will be obtained from such
3 process to ensure the debtors' estates
4 are not rendered administratively
5 insolvent.

6 The committee disagrees with
7 ESL's assertions that ESL was misled by
8 the debtors as to the administrative
9 solvency shortfall and numbers were
10 appropriately updated for a company of
11 this size.

12 Since the filing of these cases,
13 there can be no dispute that the
14 company has bent over backwards to
15 enable ESL to submit an executable,
16 going concern bid which it has
17 repeatedly failed to do.

18 The time and money spent by the
19 debtors in pursuing the go-forward
20 process since these cases were
21 commenced was done for ESL's and its
22 partners benefit.

23 Throughout the process, the
24 debtors continually made their
25 professionals and principals available

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2 to meet with ESL, including through the
3 last week and through the weekend to
4 engage with ESL on it bid.

5 In short, the committee believes
6 that ESL's bid is not the highest and
7 best alternative available for these
8 estates and it is not actionable.

9 MR. SCHROCK: So we are going to
10 adjourn the auction at this time. The
11 record is not closed. And we will let
12 you know when we are reconvening.

13 Thanks.

14 (Recess)

15 MR. SCHROCK: Good morning. It
16 is January 16 at 12:47 a.m. Continuing
17 the Sears Holding Corporation auction.
18 Ray Schrock, Weil Gotshal.

19 So we have been in discussions
20 with ESL, as well as consultation
21 parties over the last several hours.
22 We have had one private chambers
23 conference with the Court and I believe
24 at this time, ESL wishes to put a
25 revised offer on to the auction record.

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2 MR. O'NEAL: Good morning. Thank
3 you for being here and thank you for
4 all of the efforts that have been
5 occurring throughout the day. It has
6 been a long day and a long night and it
7 has been a series of long days and a
8 series of long nights.

9 And we do have the ESL bid and it
10 is the final bid. The terms that ESL
11 is offering under this bid -- which has
12 not yet been reduced to written form in
13 an APA but can be -- include the
14 following: NewCo to assume the
15 entirety of the 350 million dollars and
16 the junior DIP. This stands as an
17 increase in 120 million dollars in the
18 junior DIP that will be rolled over
19 into NewCo.

20 Second, NewCo to pay 19 million
21 dollars in transfer taxes.

22 Third, NewCo to assume 4 million
23 dollars in mechanics liens.

24 Fourth, NewCo to purchase the
25 cash and the store registers, estimated

<p style="text-align: right;">Page 73</p> <p>1 Proceedings - 1/16/19 2 to be approximately 17 million dollars. 3 Next -- and I would -- I should 4 note that this stands as total 5 additional value beyond this morning's 6 bid of 156 million dollars. 7 In addition, the debtors to 8 retain 13 million dollars in hurricane 9 insurance proceeds. 10 And then finally, NewCo to 11 acquire the proceeds from the sale of 12 SHIP to Service.Com, and in the event 13 such sale is not closed on January 22, 14 NewCo to acquire SHIP. 15 In addition, there have been 16 extensive discussions concerning a 17 release, and I will now describe the 18 terms of the release that ESL has 19 proposed. 20 For a 35 million dollar cash 21 payment at closing, ESL would be 22 permitted to credit bid all of its debt 23 claims that would be allowed and there 24 would be no collateral attack on any 25 conversion of the debt into NewCo</p>	<p style="text-align: right;">Page 74</p> <p>1 Proceedings - 1/16/19 2 equity or any transactions that are 3 approved by the court. 4 ESL would retain its deficiency 5 in 507(b) claims subject to certain 6 limitations that I will describe below. 7 ESL to waive recovery on account 8 of Section 507(b) claims from the 9 proceeds of litigation related to 10 Seritage, Lands End or other 11 transactions involving intentional 12 misconduct by ESL. 13 And ESL's recovery on account of 14 507(b) claims from the proceeds of 15 other litigation would be capped at 50 16 million dollars, and participation 17 beyond that amount in any kind of 18 recoveries for litigation claims 19 outside of the Seritage, Lands End or 20 those involving an intentional 21 misconduct by ESL would be shared pro 22 rata with unsecured claims, and then 23 finally, ESL to not use section 507(b) 24 claims to block any confirmation of any 25 plan by Sears. I think that reflects</p>
<p style="text-align: right;">Page 75</p> <p>1 Proceedings - 1/16/19 2 the terms of our offer. I appreciate 3 your time and consideration. Thank 4 you. 5 MR. SCHROCK: OK. Thanks, Sean. 6 And at this time, we will have a 7 brief adjournment just for the 8 restructuring committee to consider the 9 proposal that has been made on the 10 record and we will come back on with 11 the restructuring committee's decision. 12 Thanks. So we stand adjourned. 13 (Pause) 14 MR. SCHROCK: Back on the record 15 for just a moment. I should have added 16 "and will consult with the consultation 17 parties before coming back on record." 18 (Recess) 19 MR. SCHROCK: Let's go back on 20 the record. Ray Schrock of Weil 21 Gotshal & Manges. It is January 16 at 22 2:20 a.m. Thanks once again for 23 everybody's patience. I think ESL 24 wishes to make one clarification and 25 then I'll retake the podium.</p>	<p style="text-align: right;">Page 76</p> <p>1 Proceedings - 1/16/19 2 MR. O'NEAL: Sure. I've been 3 asked to make a clarification of one of 4 the bullets that was stated at the 5 prior session. Mr. Basta has requested 6 this to reflect actually the intent. 7 And I'll just read the revised 8 language. This is the fourth component 9 of the credit bid concept. 10 And what it says is that ESL to 11 waive recovery on account of 507(b) 12 claims and deficiency claims from the 13 proceeds of litigation related to 14 Seritage, Lands End or other 15 transactions involving intentional 16 misconduct by ESL. We are simply 17 adding "and deficiency claims" to that 18 sentence. Thank you. 19 MR. SCHROCK: Thanks Sean. 20 So on behalf of the debtors and 21 particularly the restructuring 22 committee, having considered ESL's 23 revised proposal and the material 24 increase and consideration that has 25 been put on the table, after</p>

<p style="text-align: right;">Page 77</p> <p>1 Proceedings - 1/16/19</p> <p>2 deliberation, the restructuring</p> <p>3 committee has decided to accept the ESL</p> <p>4 offer as a higher or better offer,</p> <p>5 subject to, importantly, documentation.</p> <p>6 The documentation has not been</p> <p>7 completed for any of this. I think</p> <p>8 that the parties need to -- are going</p> <p>9 to have to continue working on it and</p> <p>10 will attempt to finish the</p> <p>11 documentation as quickly as possible</p> <p>12 during the day today.</p> <p>13 For that reason, the auction will</p> <p>14 remain open until completion of that</p> <p>15 documentation and we can hopefully</p> <p>16 submit it as part of the record.</p> <p>17 I do want to note this is not an</p> <p>18 easy decision for the restructuring</p> <p>19 committee. We do appreciate all of the</p> <p>20 parties and the consultation parties on</p> <p>21 what they have been able to put on the</p> <p>22 table.</p> <p>23 In making this decision, we did</p> <p>24 take into account the Court's direction</p> <p>25 at the chambers conference today and</p>	<p style="text-align: right;">Page 78</p> <p>1 Proceedings - 1/16/19</p> <p>2 trying to come up with a solution where</p> <p>3 the debtors could attempt to maximize</p> <p>4 value, preserve thousands of jobs, and</p> <p>5 also eliminate risk of administrative</p> <p>6 insolvency where possible.</p> <p>7 The Court did direct in chambers</p> <p>8 that this is not an 1129 plan, that</p> <p>9 there is going to be -- and there will</p> <p>10 be and there is a risk for the debtors</p> <p>11 on administrative solvency with this</p> <p>12 bid and it's not free from risk in</p> <p>13 terms of getting to the closing for the</p> <p>14 debtors.</p> <p>15 Now, with all of those things</p> <p>16 being said, we do believe that the bid</p> <p>17 is higher or better and it is the best</p> <p>18 course of action for the estates.</p> <p>19 I'll let the official unsecured</p> <p>20 creditors committee step up. I'm sure</p> <p>21 they want to make a statement.</p> <p>22 MR. DIZENGOFF: Thanks, Ray. Ira</p> <p>23 Dizengoff, Akin, Gump, Strauss Hauer &</p> <p>24 Feld on behalf of unsecured creditors</p> <p>25 committee.</p>
<p style="text-align: right;">Page 79</p> <p>1 Proceedings - 1/16/19</p> <p>2 Just so the record is clear, the</p> <p>3 debtor did not -- did not consult with</p> <p>4 the creditors committee before making</p> <p>5 decision to accept this bid. The bid</p> <p>6 was put on the record, the debtor</p> <p>7 adjourned and had its board calls and</p> <p>8 restructuring committee calls and did</p> <p>9 not ask for the input of its creditors</p> <p>10 about that bid and this then made</p> <p>11 conclusion to accept the bid. Just so</p> <p>12 we are clear on that.</p> <p>13 We think the bid suffers from the</p> <p>14 same deficiencies as previously</p> <p>15 articulated, not material movement from</p> <p>16 this afternoon. Our math suggests,</p> <p>17 your own math, excuse me, suggests that</p> <p>18 the administrative deficiency here is</p> <p>19 somewhere between 90 million and 200</p> <p>20 million dollars and that this estate</p> <p>21 will be rendered administratively</p> <p>22 insolvent.</p> <p>23 In addition, Judge Drain made</p> <p>24 pretty clear that the company should</p> <p>25 discuss conditionality and execution</p>	<p style="text-align: right;">Page 80</p> <p>1 Proceedings - 1/16/19</p> <p>2 risks. Those comments, whether the</p> <p>3 debtors addressed that or not, we have</p> <p>4 no idea because we haven't seen an</p> <p>5 asset purchase agreement, but those</p> <p>6 were issues that he made pretty clear</p> <p>7 that should be addressed and should be</p> <p>8 addressed to us. We haven't seen that</p> <p>9 yet.</p> <p>10 As to the release, there is no</p> <p>11 clarity in our mind what the terms of</p> <p>12 the release are. We think that there</p> <p>13 is inadequate consideration for the</p> <p>14 credit bid. Per Judge Drain's explicit</p> <p>15 instruction, there was supposed to be</p> <p>16 an analysis.</p> <p>17 But the value of the credit bid</p> <p>18 under the ESL scenario versus the</p> <p>19 wind-down scenario, we have not seen</p> <p>20 that. So we think that there is</p> <p>21 inadequate consideration for that</p> <p>22 credit bid.</p> <p>23 Those are some of the highlights</p> <p>24 of our concerns with this. We reserve</p> <p>25 all our rights to object to this</p>

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2 proposal and the path forward and this
3 sale. That is all I have to say.
4 MR. SCHROCK: Again, Ray Schrock,
5 just briefly.
6 We were very aware of the
7 unsecured creditors committee's views
8 and we took those into account in
9 making a decision. But we will let the
10 record stand for itself. There is
11 going to be plenty of time if people
12 want to argue about this as we approach
13 the sale hearing, but we will keep the
14 auction adjourned at this time subject
15 to anyone else wanting -- everybody's
16 rights are reserved, just to be clear.
17 No rights, no rights lost.
18 Just very briefly.
19 MR. O'NEAL: Thank you very much.
20 Sean O'Neal, Clearly Gottlieb Steen &
21 Hamilton on behalf of ESL.
22 I just wanted to confirm, as has
23 been discussed, that while we have
24 reached agreement on the key terms
25 described in the record, it does remain

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2 subject to full documentation and to be
3 agreed among the parties and also it
4 needs to be confirmed by the NewCo
5 financing sources which have been very
6 much involved in our discussions and we
7 anticipate occurring promptly.
8 Thank you.
9 MR. SCHROCK: With that, we will
10 stand adjourned.
11 (Time noted: 2:26 a.m.)
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2
3 CERTIFICATE
4
5 I, MARY F. BOWMAN, a Registered
6 Professional Reporter, Certified
7 Realtime Reporter, and Notary Public do
8 hereby certify:
9 The foregoing is a true record of
10 the testimony given by in these
11 proceedings.
12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage and that I
15 am in no way interested in the outcome
16 of this matter.
17 In witness whereof, I have
18 hereunto set my hand this 16th day of
19 January, 2019.
20
21
22 MARY F. BOWMAN, RPR, CRR
23
24
25

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